The Rule of Law(lessness) in Belarus: Problems and Dramatic Changes after the Presidential Election Campaign in 2020

The rule of law in the context of authoritarian rule

In order to understand the nature of the political and legal changes that have taken place and are taking place in Belarus, it is first necessary to have a clear understanding of the concepts and phenomena that will be discussed. It is important to clearly understand the meaning of the concept of the rule of law. There is no doubt that it is directly related to the existence of democracy as such. The question is to what extent the concept of the rule of law is applicable to Belarus.

According to a basic definition, the 'rule of law is the mechanism, process, institution, practice, or norm that supports the equality of all citizens before the law, secures a nonarbitrary form of government, and more generally prevents the arbitrary use of power'. On the one hand, Belarus as a modern state could not exist without specific legal norms (laws), which constitute a 'system of rules that are created and enforced through social or governmental institutions to regulate behavior'. On the other hand, the law and legal norms have never ensured or protected the civil rights and freedoms in Belarus that were prescribed in these laws. Also, these laws have never defined the content and nature of political governance and power, although they formally contain a whole set of restrictions. The constitution and other laws that existed in Belarus before 2020 enshrined the rule of law, the freedoms of citizens, including the activities of the opposition, the changeability of power, electability, and so on. Moreover, Belarus was defined as a democratic state, even after the events of 2020. But at the same time, the rule of law was a political fiction during the whole period of Lukashenko's reign. The authoritarian political will of the ruling class prevailed. The **rule of power** surpassed the **rule of law**.

The example of Belarus and other authoritarian states shows that in non-democratic states, the rule of law, in its the classical sense, is completely absent, especially when it comes to the political rights and freedoms of citizens. We may only talk about the extent of existing restrictions that make it possible or impossible for the population to exercise the rights prescribed in the regulations, as well as embedding these restrictions in existing political rules and practices. For a long time, the Belarusian society accepted the existing order of

things and probably did not even realize the extent of the political restrictions that existed in the country. In 2020, the majority of citizens, being convinced of the legitimacy of their actions, faced a reality in which their legal rights meant nothing. This discrepancy was so obvious, shocking, and egregious that, in order to protect the rule of power, Lukashenko called on law enforcement agencies to completely ignore existing legal norms. This was expressed in his phrase 'sometimes it's not up to the laws'. The breach of the 'political contract' based on civil ignorance, the destruction of the legitimacy of the Lukashenka regime, and, as a result of these, large-scale repressions led to a deep political crisis and forced the authorities to strengthen the restrictions on the rights and freedoms of citizens. It was also necessary to create a legal basis for repression.

Amendments to the constitution in 2022

After the electoral crisis of 2020, a number of institutional and legal changes were brought in to consolidate the new political order (which could be defined as neo-totalitarian) and maximally limit the conditions for civil political activity and freedoms, even at the formal level. A number of these changes were enshrined in the amendments to the constitution adopted in the referendum on February 27, 2023.

In general terms, the constitution guarantees the rights and freedoms of citizens, proclaims the rule of law, and is even more democratic in textual terms than those that existed before. At the same time, the document pays special attention to the conditions and mechanisms aimed at introducing a state of emergency, with restrictions on the rights and freedoms of citizens in connection with 'attempts of forceful, unconstitutional seizure of power'. For example, the constitution enshrines the concept of 'the ideology of the Belarusian state as the basis of democracy', which in turn removes all formal restrictions on imposing the prevailing political doctrine in schools, universities, enterprises and other institutions. Any contradiction to this doctrine at the level of opinions or actions will be met with repression by the state administration.

The new constitution also introduced the following additional electoral qualifications (limitations) for possible presidential candidates in order to limit any opportunity for representatives of the Belarusian political diaspora to apply for this position: 'A citizen of the Republic of Belarus by birth, at least 40 years old, who has the right to vote, who has been permanently residing in the Republic of Belarus for at least 20 years immediately before the election, who does not have and has not previously had citizenship of a foreign state or a residence permit or other document of a foreign state entitling to benefits and other advantages, may be elected President'.

At the same time, it should be noted that under the current regime, it is not possible for representatives of the democratic community to take part in the elections. It is to be expected that in the process of political transformation, this constitution, as well as other restrictive laws adopted by the current government, will lose their force. Based on the experience of 2020, the ruling class of Belarus introduced new elements of political governance that were supposed to ensure the stability of the regime, the consolidation of the nomenclature and power apparatus, and collective management and collective responsibility for emergency measures. The implementation of these changes through the constitution was entrusted to the Security Council and the all-Belarusian People's Assembly, which received the status of state bodies.

The Security Council of the Republic of Belarus served as an advisory body until the events of 2020. In May 2021, Lukashenka signed a special decree, as a result of which the Security Council received the status of a collective emergency state body that unites all higher administrative and law enforcement agencies. The Security Council of the Republic of Belarus in fact assumed the functions of the shadow government and is responsible today for the implementation of a systemic repressive policy in the Republic, including the elaboration of regulations necessary to restrict the rights and freedoms of citizens and legitimize the policy of terror.

The all-Belarusian People's Assembly, which until 2023 had the status of an informal ideological, consultative assembly, was turned into a super-representative (quasi-parliamentarian) legislative branch of the state. It is made up of approximately 1200 delegates, whose term of office is five years. The presidium of the Assembly (whose status and functions are not defined by the constitution and other normative acts) will serve as another super-government. The main task of the Assembly is to strengthen the mass support and legitimacy of Lukashenka's government and the decisions he makes. It should be noted that the Assembly has received the exclusive right to amend the constitution, which in the future will be used by the Lukashenka regime for further manipulations. In general, it should be noted that the amendments to the constitution have strengthened the bureaucratic component of the political system, which has become overloaded with new institutions that duplicate functions and tasks. Their aim is to create an illusion of democracy and representativeness, as well as new tools to legitimize the regime.

Lukashenka's anti-civil rights policies – regulations and actions of punitive bodies

The internal policies pursued by the Lukashenka's regime are aimed at destroying any civil

activity and preventing the emergence of possible pockets of resistance or disagreement in the future. On the one hand, the authorities are introducing increasingly restrictive initiatives at the legislative level. On the other hand, there is an unspoken policy that allows repressive bodies such as the Ministry of Internal Affairs (the main directorate for combating organized crime and corruption – GUBOPiK), the KGB, and the Investigation Committee to act without limits within the framework of existing legislation, and apply special methods to influence civil activists. Employees of these structures are completely exempt from any responsibility for their actions, even in their everyday life.

The following description of a conflict between the former head of GUBOPiK A. Parshin and some teenagers in Minsk in June 2022 illustrates the absolute arbitrariness and impunity, which is tolerated in officers belonging to these repressive structures: 'Colonel Andrey Parshin was returning home and started a conflict, using obscene language with children sitting near the entrance of an apartment building. Parshin grabbed one of the teenagers (Yevgeny D.), tore his T-shirt in one movement, and gave the him a slap in the face. But Yevgeny, a sporty boy training to become a master rower, hit back. After that, Parshin pulled out a weapon and opened fire on the teenagers, as a result of which Yevgeny was seriously wounded. After the incident, unprecedented pressure was exerted on the children and their parents, as a result of which they pleaded guilty. A criminal case was initiated against Yevgeny. His further fate is unknown.

The typical 'special measures to influence civil activists' used by repressive structures include physical and psychological violence, unjustified detentions, beatings, unauthorized searches and vandalism, isolation and constant pressure against political prisoners, failure to provide medical care, incitement to suicide and murder. The purpose of legislative initiatives is not only to create a legal basis for repression, but also to reinforce the psychological atmosphere of terror in society. The war in Ukraine has resulted in a further distortion and degradation of the legal system in Belarus, thus giving rise to such a phenomenon as **state banditry**. Examples of these initiatives are absentee trials, deprivations of citizenship, and the introduction of the death penalty for treason. The most absurd innovation is the 'trials of the dead'.

It is worth dwelling in more detail on the analysis of these legal innovations, as they quite clearly reflect not only the complete collapse of basic rights, but also the irrationality of Lukashenka and his entourage. This group of people is ready to take measures typically associated with totalitarian states to secure their own power. Back in 2021, the Security Council of the Republic of Belarus, together with the Ministry of Internal Affairs and other institutions, tightened the measures taken against those citizens of Belarus who actively opposed the Lukashenka regime, as well as those who were forced to leave the country. The

first step in the creation of repressive legislation was the tightening of the law ‘On Countering Extremism’. In fact, any political opposition activity directed against the Lukashenka regime can be recognized as extremist, as it can be seen from the following quotation, which also shows that the list of such activities is huge:

‘Extremism (extremist activity) is the activity of citizens of the Republic of Belarus, foreign citizens or stateless persons or political parties, trade unions, other public associations, religious and other organizations, including foreign or international organizations or their representative offices, formations and individual entrepreneurs for planning, organizing, preparing and committing encroachments on independence, territorial integrity, sovereignty, the foundations of the constitutional system, public security by:

- forcible change of the constitutional system and (or) territorial integrity of the Republic of Belarus;
- seizure or retention of state power by unconstitutional means;
- dissemination for these purposes of deliberately false information about the political, economic, social, military or international situation of the Republic of Belarus, the legal status of citizens in the Republic of Belarus, discrediting the Republic of Belarus;
- insults for these purposes of a representative of the authorities in connection with the performance of his official duties, discrediting public authorities and management;
- organizing and carrying out mass riots, acts of vandalism involving damage or destruction of property, seizure of buildings and structures, other actions grossly violating the public order;
- rehabilitation of Nazism, propaganda or public display, manufacture, distribution of Nazi symbols and attributes, as well as storage or acquisition of such symbols or attributes for the purpose of dissemination;
- obstruction of the legitimate activities of state bodies, including the Central Commission of the Republic of Belarus for Elections and Holding Republican Referendums, election commissions, referendum commissions, commissions for voting on the recall of a deputy, as well as the legitimate activities of officials of these bodies, commissions, committed with the use of violence, threats of its use, deception, bribery, as well as the use of violence or threats of violence against the relatives of these officials in order to hinder their legitimate activities or force them to change the nature of such activities or out of revenge for the performance of their official duties;
- public calls to organize or conduct for these purposes illegal meetings, rallies, street processions, demonstrations or picketing in violation of the established procedure for their organization or conduct.

According to the Belarusian human-rights defense center Spring, about 2,500 people were

convicted for extremism (as defined by the government) between August 2020 and the end of 2022. At the end of 2022, the Ministry of Internal Affairs published a list of persons involved in extremist activities, which included 1,881 people, as well as dozens of organizations. According to the authorities, more than 6,000 extremist crimes were committed in 2022. For example, the resources of the independent Belsat TV channel (located in Poland) were classified as extremist and its activities banned. The creators, organizers and participants of training courses considered extremist face imprisonment for up to ten years. The list of extremist organizations includes many independent media outlets (such as www.zekalo.io, www.euroradio.fm) and a number of public organizations. This is a sign of the systematic destruction of civil society institutions and civic activity in Belarus.

It is significant that those Belarusian lawyers who defended Lukashenka's political opponents are also being held charged with extremism. For example, Belarusian lawyer Inessa Olenskaya, who defended Sergei Tikhanovsky, Nastya Loiko, Roman Protasevich and Grigory Kostusev, was tried on March 24 in the Leninsky district court of Minsk. She was accused of distributing extremist materials and later stripped of her lawyer's license. It also should be noted here that after the events of 2020, the institute of advocacy was abolished. More than 50 Belarusian lawyers, who defended the rights of detained and arrested citizens, were stripped of their lawyers' licenses.

The role of a lawyer in political cases has now been minimized, and there can be repression against lawyers, if they try to protect their clients. There is no opportunity to get even minimal legal protection in a confrontation with the neo-totalitarian state. Previously, even if the lawyers were unable to influence the sentencing process in political cases, they could at least provide a channel for prisoners to communicate with the outside world. On the one hand, this support was of important moral and psychological significance to the people in prison, as it helped to overcome their isolation, and on the other hand, it gave some protection against lawlessness in the prison administration's treatment of the political prisoners.

To date, both due to the repression against lawyers and the purposeful policy of isolating prisoners, the latter have completely lost contact with the outside world. The administrations of prisons and penal colonies implement measures aimed at the physical and moral-psychological destruction of the individual. Among the most common practices are prolonged solitary confinement and regular beatings, which eventually lead to the death of the prisoners. This happened to Witold Ashurak, who was killed in prison in 2021. On July 11, 2023 Ales Pushkin, another political prisoner and famous Belarusian artist and cultural activist, also died under unclear circumstances after having been hospitalized.

The Ukrainian factor in the intensification of repression

With the beginning of the Russian aggression against Ukraine, the fight against opposition activity inside the country, including in social networks, has intensified. The situation worsened after the adoption of amendments to the Criminal Code. These changes brought in tougher penalties for:

- high treason (defined as providing information constituting state secrets, switching to the side of the enemy). It carries the death penalty if committed by officials and military personnel;
- propaganda of terrorism;
- discrediting 'the Armed Forces of the Republic of Belarus, other troops and military formations, paramilitary organizations'.

More than 20 people have already been convicted for high treason in Belarus: among them Belsat journalist Katerina Andreeva (who was sentenced to eight years and three months in prison). Any criticism of the actions of the Russian Federation in Ukraine, expression of support for Ukraine, and transmission of data (photos or information) regarding the deployment or relocation of Russian troops on the territory of Belarus is prosecuted and severely punished. Belarusian citizens sympathizing with Ukraine are subjected to repression not only under the articles of extremism, but also for 'incitement of national enmity' (Article 130 of the Criminal Code). An example of this is the detention of the orthodox priest Dionisiy Korostelev on January 5, 2023. He was arrested after being denounced to the security services by a pro-government informer because of a prayer service the priest had held for Ukrainian soldiers.

On January 5, 2023, GUBOPiK employees detained two teenagers aged 13 and 15 for criticizing Russia, accusing them of 'Nazism' and 'inciting social hostility against the Russian nation' (the teenagers are described in pro-government as 'germs of neo-Nazism'). These measures are also connected to the increasing militarization of the Belarusian society, and its mobilization and preparation for an armed conflict with external forces, or for internal confrontation. The authorities see a particular threat in the activities of Belarusian volunteers within the K. Kalinovsky regiment and other Belarusian volunteer formations fighting against the Russian aggressor in Ukraine.

The war in Ukraine has accelerated the adoption by the authorities of a number of acts reinforcing repressive actions directed against Belarusian political emigrants and volunteers, such as the 'Law on Deprivation of Citizenship' and the new practice of 'absentee court sentences'. Amendments to the law on 'Citizenship of the Republic of

Belarus' dated January 5, 2023 provide for the deprivation of citizenship of citizens of Belarus who have entered the service of law enforcement and security agencies of a foreign state, as well as in connection with the presence of a verdict of the court of the Republic of Belarus that has entered into force confirming the participation of this person in extremist activities or causing serious harm to the interests of the Republic of Belarus. Potentially, any Belarusian citizen by birth engaging in opposition activities who is considered by the authorities to pose a threat and who resides abroad can be deprived of citizenship. This is a mechanism of indirect repression directed against the representatives of the Belarusian diaspora, whom the Lukashenka regime cannot influence in any other way.

For the same purposes, an institute for special criminal proceedings (by correspondence) was created in 2022 to deal with defendants who reside outside Belarus and fail to attend their criminal trial in person. The list of 'crimes' which demand special proceedings is quite long and includes, for example, acts of terrorism, genocide, mercenary activity, high treason, sabotage, the creation of an extremist formation or participation in it, mass riots, and calls for sanctions against the regime. In the summer of 2023, a series of performative absentee court sessions were held in Belarus, at which political opponents of the authorities were sentenced to long prison terms. Among them are Svetlana Tikhanovskaya, Olympic champion Alexandra Gerasimena, and a number of political activists, journalists, and bloggers.

In general, the degradation of the rule of law and civic rights in Belarus is accelerating and taking on the most absurd forms. The authorities have now instigated new changes to the criminal code, which will allow criminal cases against the dead (!) under 10 articles. Among them: genocide, ecocide, terrorism, violation of the laws of war, etc. In such cases, the deceased defendants will be provided with a lawyer. Moreover, it will be impossible to refuse his/her services, even if the relatives of the accused do not wish to accept them. Government agencies have also introduced various measures restricting the movement of citizens abroad. Some categories of citizens, such as law enforcement officials, judges, and officials, are prohibited from traveling to Western countries. Due to the growing tension with the Polish Republic, the authorities have recently begun to systematically withdraw the so-called 'Pole card'.

Conclusions

- The law, as a mechanism for protecting a citizen against the state, has ceased to exist in Belarus. The interests of the state and government representatives completely

overrule the rights and interests of citizens, which is a typical feature of (neo)totalitarian states. Therefore, the ‘rule of law’, which constitutes a fundamental principle of democratic states, is now absent in Belarus.

- Proceeding from the fact that the ‘state interest’ is the fundamental principle of political life in Belarus, officials and especially the members of repressive structures (who secure this interest) have turned into a privileged caste, standing above the law and basic human rules of behavior.
- There is almost total political control over the Belarusian society, and the adopted norms define a number of restrictions and expand the space for repression, legitimizing the most absurd measures.
- Any political and civil activity leads to persecution by the authorities; any opposition against the government is deemed unacceptable and is judged to constitute an ‘illegal activity’. Thus, the state has established a monopoly over politics in Belarus.
- Even citizens who do not participate in politics are in fact defenseless against police arbitrariness. Any dissatisfaction with the general living conditions (prices, wages, services) in the country can be considered as an action against or a criticism of the authorities.
- The existing judicial norms in Belarus, the so-called legal regulations, are aimed at the destruction of civil society, the legalization of repression, and the removal of any restrictions on state institutions in order to protect the existing political order.
- In general, it is to be expected that the tendencies aimed at the legal formalization of the totalitarian state in Belarus will continue. This will be facilitated by the formation of a virtually unified political partnership with Russia, as well as the war in Ukraine.

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